

ASSEMBLY BILL

No. 2080

Introduced by Assembly Member Donnelly

February 20, 2014

An act to amend Sections 17215.1, 17551, 18631, 18663, and 19183 of, and to add Sections 17131.8 and 17131.15 to, the Revenue and Taxation Code, and to amend Sections 940, 13009, and 13009.5 of, and to amend and repeal Sections 927, 987.7, 13027, and 13055 of, the Unemployment Insurance Code, relating to taxation.

LEGISLATIVE COUNSEL’S DIGEST

AB 2080, as introduced, Donnelly. Personal income taxes: unemployment insurance: tips.

The Personal Income Tax Law, in modified conformity with federal law, provides various exclusions from gross income in computing tax liability. Existing law requires employers to make specified payments and withholdings from wages paid for employment to, and to file reports of wages and make contributions for unemployment insurance and the employment training tax with, the Employment Development Department, which is charged with administering the state’s payroll taxes.

This bill would, for taxable years beginning on or after January 1, 2015, exclude tips, as defined, from gross income for the purposes of the Personal Income Tax Law. This bill also would exclude tips from the definition of wages paid for employment for the purposes of income tax withholding and for purposes of unemployment insurance and the employment training tax. This bill would also make related changes to other provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17131.8 is added to the Revenue and
2 Taxation Code, to read:
3 17131.8. Section 102(a) of the Internal Revenue Code is
4 modified to treat tips as property transferred by gift.
5 SEC. 2. Section 17131.15 is added to the Revenue and Taxation
6 Code, to read:
7 17131.15. (a) For taxable years beginning on or after January
8 1, 2015, gross income does not include tips.
9 (b) “Tips” includes any gratuity provided by a customer or client
10 of the employer’s business.
11 SEC. 3. Section 17215.1 of the Revenue and Taxation Code
12 is amended to read:
13 17215.1. (a) Section 220(f)(5) of the Internal Revenue Code,
14 relating to rollover contributions, shall not apply.
15 (b) *For taxable years on or after January 1, 2015, Section*
16 *220(b)(4)(A) of the Internal Revenue Code is modified to strike*
17 *out “tips.”*
18 SEC. 4. Section 17551 of the Revenue and Taxation Code is
19 amended to read:
20 17551. (a) Subchapter E of Chapter 1 of Subtitle A of the
21 Internal Revenue Code, relating to accounting periods and methods
22 of accounting, shall apply, except as otherwise provided.
23 (b) Section 444(c)(1) of the Internal Revenue Code, relating to
24 effect of election, shall not apply.
25 (c) (1) Notwithstanding the specified date contained in
26 paragraph (1) of subdivision (a) of Section 17024.5, Section 457
27 of the Internal Revenue Code, relating to deferred compensation
28 plans of state and local governments and tax-exempt organizations,
29 shall apply, except as otherwise provided, without regard to taxable
30 year to the same extent as applicable for federal income tax
31 purposes.
32 (2) The maximum deferred compensation for the taxable year
33 that may be excluded from gross income under Section 457 of the
34 Internal Revenue Code, as applicable for state purposes, shall not
35 exceed the amount of deferred compensation that may be excluded

1 from gross income under Section 457 of the Internal Revenue
2 Code, as in effect on January 1, 2010, including additional elective
3 deferrals under Section 414(v) of the Internal Revenue Code, as
4 in effect on January 1, 2010.

5 (d) (1) For taxable years beginning on or after January 1, 2002,
6 the basis of any person in the plan shall be increased by the amount
7 of compensation not allowed to be excluded under subdivision (a).

8 (2) Any basis described in paragraph (1) shall be recovered in
9 the manner specified in Section 17085.

10 (e) Notwithstanding the limitations provided in subdivision (a),
11 any income attributable to compensation deferred in a plan in
12 taxable years beginning on or after January 1, 2002, in conformance
13 with Section 457 of the Internal Revenue Code, as applicable for
14 federal and state purposes, shall not be includable in the gross
15 income of the individual for whose benefit the plan was established
16 until distributed pursuant to the provisions of the plan or by
17 operation of law.

18 (f) (1) Section 451(i) of the Internal Revenue Code, relating
19 to special rule for sales or dispositions to implement Federal Energy
20 Regulatory Commission or state electric restructuring policy, shall
21 not apply.

22 (2) *For taxable years beginning on or after January 1, 2015,*
23 *Section 451(c) of the Internal Revenue Code, relating to special*
24 *rule for employee tips, shall not apply.*

25 (g) Section 457A of the Internal Revenue Code, relating to
26 nonqualified deferred compensation from certain tax indifferent
27 parties, shall not apply.

28 SEC. 5. Section 18631 of the Revenue and Taxation Code is
29 amended to read:

30 18631. (a) This article does not apply to any payment of
31 interest obligations not taxable under Part 10 (commencing with
32 Section 17001) or Part 11 (commencing with Section 23001).

33 (b) Except as otherwise provided, every person required to file
34 an information return with the Secretary of the Treasury under any
35 of the federal sections listed in subdivision (c) may be required to
36 file a copy of the federal information return with the Franchise
37 Tax Board at the time and in the manner as it may, by forms and
38 instructions, require.

39 (c) Subdivision (b) shall apply to each of the following:

1 (1) Section 6034A of the Internal Revenue Code, relating to
2 information to beneficiaries of estates and trusts.

3 (2) Section 6039 of the Internal Revenue Code, relating to
4 returns required in connection with certain options.

5 (3) Section 6039C of the Internal Revenue Code, relating to
6 returns with respect to foreign persons holding direct investments
7 in United States real property interests, if that person holds a direct
8 investment in a California real property as defined in Section
9 18662.

10 (4) Section 6041 of the Internal Revenue Code, relating to
11 information at source.

12 (5) Section 6041A of the Internal Revenue Code, relating to
13 returns regarding payments of remuneration for services and direct
14 sales, except that no return or statement shall be required with
15 respect to direct sales pursuant to Section 6041A(b) of the Internal
16 Revenue Code.

17 (6) Section 6042 of the Internal Revenue Code, relating to
18 returns regarding payments of dividends and corporate earnings
19 and profits.

20 (7) Section 6045 of the Internal Revenue Code, relating to
21 returns of brokers.

22 (8) Section 6049 of the Internal Revenue Code, relating to
23 returns regarding payments of interest.

24 (9) Section 6050H of the Internal Revenue Code, relating to
25 returns relating to mortgage interest received in trade or business
26 from individuals.

27 (10) (A) Section 6050I of the Internal Revenue Code, relating
28 to returns relating to cash received in trade or business, etc., except
29 that Section 6050I(g) of the Internal Revenue Code, relating to
30 cash received by criminal court, shall not apply.

31 (B) (i) The Attorney General shall, upon court order following
32 a showing ex parte to a magistrate of an articulable suspicion that
33 an individual or entity has committed a felony offense to which a
34 federal information return is related, be provided a copy of a federal
35 information return filed with the Franchise Tax Board under this
36 paragraph. The Attorney General may make a return or information
37 therefrom available to a district attorney subject to regulations
38 promulgated by the Attorney General. The regulations shall require
39 the district attorney seeking the return or information to specify

1 in writing the specific reasons for believing that a felony offense
2 has been committed to which the return or information is related.

3 (ii) Any information or return obtained by the Attorney General
4 or a district attorney pursuant to this subparagraph shall be
5 confidential and used only for investigative or prosecutorial
6 purposes.

7 (11) Section 6050J of the Internal Revenue Code, relating to
8 returns relating to foreclosures and abandonments of security.

9 (12) (A) Section 6050K of the Internal Revenue Code, relating
10 to returns relating to exchanges of certain partnership interests.

11 (B) In addition to the general requirement under subparagraph
12 (A), a transferor of a partnership interest shall be required to notify
13 the partnership of that exchange in accordance with Section
14 6050K(c) of the Internal Revenue Code.

15 (13) Section 6050L of the Internal Revenue Code, relating to
16 returns relating to certain donated property.

17 (14) Section 6050N of the Internal Revenue Code, relating to
18 returns regarding payments of royalties.

19 (15) Section 6050P of the Internal Revenue Code, relating to
20 returns relating to the cancellation of indebtedness by certain
21 entities.

22 (16) Section 6050Q of the Internal Revenue Code, relating to
23 certain long-term care benefits.

24 (17) Section 6050R of the Internal Revenue Code, relating to
25 returns relating to certain purchases of fish.

26 (18) Section 6050S of the Internal Revenue Code, relating to
27 returns relating to higher education tuition and related expenses.

28 (19) Section 6052 of the Internal Revenue Code, relating to
29 returns regarding payment of wages in the form of group-term life
30 insurance.

31 (20) Section 6034(a) of the Internal Revenue Code, relating to
32 returns of split-interest trusts.

33 (21) Section 6039I of the Internal Revenue Code, relating to
34 returns and records with respect to employer-owned life insurance
35 contracts.

36 (22) Section 6039J of the Internal Revenue Code, relating to
37 information reporting with respect to commodity credit corporation
38 transactions.

1 (23) Section 6050V of the Internal Revenue Code, relating to
2 returns relating to applicable insurance contracts in which certain
3 exempt organizations hold interests.

4 (24) Section 6050W of the Internal Revenue Code, relating to
5 returns relating to payments made in settlement of payment card
6 and third party network transactions.

7 (25) Any information return that is required to be filed with the
8 Secretary of the Treasury pursuant to a provision of Part III of
9 Subchapter A of Chapter 61 of Subtitle F (commencing with
10 Section 6031) of the Internal Revenue Code that is added to the
11 Internal Revenue Code by a public law enacted on or after January
12 1, 2009.

13 (d) Every person required to make a return under subdivision
14 (b) shall also furnish a statement to each person whose name is
15 required to be set forth in the return, as required to do so by the
16 Internal Revenue Code.

17 (e) *For taxable years beginning on or after January 1, 2015,*
18 *Section 6041(e) of the Internal Revenue Code shall not apply.*

19 SEC. 6. Section 18663 of the Revenue and Taxation Code is
20 amended to read:

21 18663. (a) (1) The Franchise Tax Board shall annually (or
22 more often if necessary) prepare and make available to the
23 Employment Development Department, wage withholding tables
24 that shall be used by every employer making payment of any wages
25 to a resident employee for services performed either within or
26 without this state; or to a nonresident employee for services
27 performed in this state, to deduct and withhold from those wages
28 for each payroll period, a tax computed in a manner as to produce,
29 so far as practicable, with due regard to the credits for personal
30 exemptions allowable under Section 17054, a sum that is
31 substantially equivalent to the amount of tax reasonably estimated
32 to be due under Part 10 (commencing with Section 17001) resulting
33 from the inclusion in the gross income of the employee the wages
34 which were subject to withholding.

35 (2) For wages paid on or after November 1, 2009, wage
36 withholding tables prepared by the Franchise Tax Board pursuant
37 to this subdivision shall produce, so far as practicable, with due
38 regard to the credits for personal exemptions allowable under
39 Section 17054, a sum that will significantly prevent

1 underwithholding by using an amount equal to 10 percent more
2 than the sum described in paragraph (1).

3 (b) (1) (A) For supplemental wages paid on or after January
4 1, 1992, the rate of withholding that may be applied to
5 supplemental wages in lieu of the wage withholding tables
6 specified in subdivision (a) shall be 6 percent.

7 (B) For supplemental wages paid on or after November 1, 2009,
8 the rate of withholding shall be 6.6 percent.

9 (2) For purposes of this ~~subdivision~~, ~~“supplemental wages”~~
10 ~~subdivision~~:

11 (A) *“Supplemental wages”* includes, but is not limited to, bonus
12 payments, overtime payments, commissions, sales awards, back
13 pay including retroactive wage increases, and reimbursements for
14 nondeductible moving expenses that are paid for the same or a
15 different period, or without regard to a particular period.

16 (B) *For taxable years beginning on or after January 1, 2015,*
17 *“supplemental wages” does not include tips, which includes any*
18 *gratuity provided by a customer or client of the employer’s*
19 *business.*

20 (c) (1) For stock options and bonus payments that constitute
21 wages paid on or after January 1, 2002, the rate of withholding
22 that may be applied to those stock options and bonus payments in
23 lieu of the wage withholding tables specified in subdivision (a)
24 shall, notwithstanding subdivision (b), be 9.3 percent.

25 (2) For stock options and bonus payments that constitute wages
26 paid on or after November 1, 2009, the rate of withholding shall
27 be 10.23 percent.

28 SEC. 7. Section 19183 of the Revenue and Taxation Code is
29 amended to read:

30 19183. (a) (1) A penalty shall be imposed for failure to file
31 correct information returns, as required by this part, and that
32 penalty shall be determined in accordance with Section 6721 of
33 the Internal Revenue Code.

34 (2) Section 6721(e) of the Internal Revenue Code is modified
35 to the extent that the reference to Section 6041A(b) of the Internal
36 Revenue Code shall not apply.

37 (b) (1) A penalty shall be imposed for failure to furnish correct
38 payee statements as required by this part, and that penalty shall be
39 determined in accordance with Section 6722 of the Internal
40 Revenue Code.

(2) Section 6722(c) of the Internal Revenue Code is modified to the extent that the references to Sections 6041A(b) and 6041A(e) of the Internal Revenue Code shall not apply.

(c) A penalty shall be imposed for failure to comply with other information reporting requirements under this part, and that penalty shall be determined in accordance with Section 6723 of the Internal Revenue Code.

(d) (1) The provisions of Section 6724 of the Internal Revenue Code relating to waiver, definitions, and special rules, shall apply, except as otherwise provided.

(2) Section 6724(d)(1) of the Internal Revenue Code is modified as follows:

(A) The following references are substituted:

(i) Subdivision (a) of Section 18640, in lieu of Section 6044(a)(1) of the Internal Revenue Code.

(ii) Subdivision (a) of Section 18644, in lieu of Section 6050A(a) of the Internal Revenue Code.

(B) References to Sections 4093(c)(4), 4093(e), 4101(d), 6041(b), 6041A(b), 6045(d), 6051(d), and 6053(c)(1) of the Internal Revenue Code shall not apply.

(C) The term “information return” shall also include both of the following:

(i) The return required by paragraph (1) of subdivision (i) of Section 18662.

(ii) The return required by subdivision (a) of Section 18631.7.

(D) For taxable years beginning on or after January 1, 2015, Section 6724(d)(1)(B)(xvi) of the Internal Revenue Code shall not apply.

(3) Section 6724(d)(2) of the Internal Revenue Code is modified as follows:

(A) The following references are substituted:

(i) Subdivision (b) of Section 18640, in lieu of Section 6044(e) of the Internal Revenue Code.

(ii) Subdivision (b) of Section 18644, in lieu of Section 6050A(b) of the Internal Revenue Code.

(B) References to Sections 4093(c)(4)(B), 6031(b), 6037(b), 6041A(e), 6045(d), 6051(d), 6053(b), and 6053(c) of the Internal Revenue Code shall not apply.

(C) The term “payee statement” shall also include the statement required by paragraph (2) of subdivision (i) of Section 18662.

1 (D) Section 6724(d)(2)(X) of the Internal Revenue Code shall
2 not apply.

3 (e) In the case of each failure to provide a written explanation
4 as required by Section 402(f) of the Internal Revenue Code, at the
5 time prescribed therefor, unless it is shown that the failure is due
6 to reasonable cause and not to willful neglect, there shall be paid,
7 on notice and demand of the Franchise Tax Board and in the same
8 manner as tax, by the person failing to provide that written
9 explanation, an amount equal to ten dollars (\$10) for each failure,
10 but the total amount imposed on that person for all those failures
11 during any calendar year shall not exceed five thousand dollars
12 (\$5,000).

13 (f) Any penalty imposed by this part shall be paid on notice and
14 demand by the Franchise Tax Board and in the same manner as
15 tax.

16 SEC. 8. Section 927 of the Unemployment Insurance Code is
17 amended to read:

18 927. (a) "Wages" also means all tips which are received while
19 performing services which constitute employment and included
20 in a written statement furnished to the employer pursuant to Section
21 6053(a) of the Internal Revenue Code.

22 (b) The changes in law made in this section by Chapter 1461
23 of the Statutes of 1985 shall apply with respect to wages earned
24 on and after January 1, 1986, in conformity with the provisions of
25 federal law.

26 (c) *This section is repealed on January 1, 2015.*

27 SEC. 9. Section 940 of the Unemployment Insurance Code is
28 amended to read:

29 940. (1) For the purposes of this section, of Sections 977 and
30 977.5 to the extent specified by those sections, and of Sections
31 1026, 1088, 1280, 1281, 1282, 2652, 2654, 2655, and 2657,
32 "wages" means taxable wages as well as wages which would be
33 taxable except for the limitations on taxable wages provided under
34 Sections 930 and 985.

35 (2) *On and after January 1, 2015, "wages" shall not include*
36 *tips, which includes any gratuity provided by a customer or client*
37 *of the employer's business.*

38 SEC. 10. Section 987.7 of the Unemployment Insurance Code
39 is amended to read:

1 987.7. (a) If the worker contributions required in any one
2 month to be made because of the receipt of cash tips and cash
3 gratuities exceed the wages of the worker under the control of the
4 employer, the worker may furnish the employer, on or before the
5 10th day of the following month, or, if the amounts are estimated,
6 on or before the last day of the month following the calendar
7 quarter, an amount equal to the excess.

8 (b) If the worker contributions required by Section 984 with
9 respect to cash tips and cash gratuities exceed the amount of worker
10 contributions that can be collected by the employer from the wages
11 of the worker, the excess shall be paid by the worker, except as
12 provided by Section 1088.6. The worker shall pay the excess to
13 the department within 30 days from his or her receipt of the written
14 statement furnished by his or her employer pursuant to Section
15 1088.6. If the worker fails to pay the excess within the time
16 required by this subdivision, the director may make an assessment
17 for the excess and shall give the worker a written notice of the
18 assessment. Article 8 (commencing with Section 1126) with respect
19 to the assessment of contributions and Chapter 7 (commencing
20 with Section 1701) with respect to the collection of contributions
21 shall apply to the recovery of amounts under this subdivision.

22 (c) The director may offset amounts assessed pursuant to
23 subdivision (b) against any refund payable to the worker under
24 Section 1176.5 or against any amount of disability benefits to
25 which he or she may become entitled under Part 2 (commencing
26 with Section 2601) within any of the following periods:

27 (1) The current disability benefit period.

28 (2) One year from the beginning date of any disability benefit
29 period that begins during the three-year period next succeeding
30 the service of notice of the assessment.

31 (d) *This section is repealed on January 1, 2015.*

32 SEC. 11. Section 13009 of the Unemployment Insurance Code
33 is amended to read:

34 13009. "Wages" means all remuneration, other than fees paid
35 to a public official, for services performed by an employee for his
36 or her employer, including all remuneration paid to a nonresident
37 employee for services performed in this state, and the cash value
38 of all remuneration paid in any medium other than cash, except as
39 provided by this section. ~~"Wages" includes tips received by an~~
40 ~~employee in the course of his or her employment. The wages shall~~

1 be deemed to be paid at the time a written statement including tips
2 is furnished to the employer pursuant to Section 13055 or, if no
3 statement including those tips is so furnished, at the time received.

4 “Wages” includes ~~compensation~~, *compensation* that is deductible
5 under Section 162 of the Internal Revenue ~~Code~~, *Code* paid to a
6 member of a limited liability company filing a federal corporate
7 income tax return.

8 “Wages” shall not include remuneration paid under any of the
9 following conditions:

10 (a) For agricultural labor, as defined in subdivision (g) of Section
11 3121 of the Internal Revenue Code.

12 (b) For domestic service in a private home, local college club,
13 or local chapter of a college fraternity or sorority.

14 (c) For service not in the course of the employer’s trade or
15 business performed in any calendar quarter by an employee, unless
16 the cash remuneration paid for that service is fifty dollars (\$50) or
17 more and the service is performed by an individual who is regularly
18 employed by the employer to perform the service. For purposes
19 of this subdivision, an individual shall be deemed to be regularly
20 employed by an employer during a calendar quarter only if either
21 of the following conditions is met:

22 (1) On each of some 24 days during the quarter, the individual
23 performs for the employer for some portion of the day service not
24 in the course of the employer’s trade or business.

25 (2) The individual was regularly employed, as determined under
26 paragraph (1), by the employer in the performance of the service
27 during the preceding calendar quarter.

28 (d) For services by a citizen or resident of the United States for
29 a foreign government or an international organization.

30 (e) For services performed by a nonresident alien individual as
31 designated by regulations prescribed by the department.

32 (f) For services performed by a duly ordained, commissioned,
33 or licensed minister of a church in the exercise of his or her
34 ministry or by a member of a religious order in the exercise of
35 duties required by the order.

36 (g) (1) For services performed by an individual under the age
37 of 18 years in delivery or distribution of newspapers or shopping
38 news, not including delivery or distribution to any point for
39 subsequent delivery or distribution.

(2) For services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him or her at a fixed price, his or her compensation being based on the retention of the excess of the price over the amount at which the newspapers or magazines are charged to him or her whether or not he or she is guaranteed a minimum amount of compensation for the services, or is entitled to be credited with the unsold newspapers or magazines turned back.

(h) For services not in the course of the employer's trade or business, to the extent paid in any medium other than cash.

(i) To, or on behalf of, an employee or his or her beneficiary under any of the following situations:

(1) From or to a trust which is exempt from tax under Section 17631 of the Revenue and Taxation Code at the time of payment, unless the payment is made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust.

(2) Under or to an annuity plan which, at the time of payment, is a plan qualified pursuant to Chapter 5 (commencing with Section 17501) of Part 10 of Division 2 of the Revenue and Taxation Code.

(3) Under or to a bond purchase plan which, at the time of payment, is a bond purchase plan qualified pursuant to Chapter 5 (commencing with Section 17501) of Part 10 of Division 2 of the Revenue and Taxation Code.

(4) For a payment which qualifies for deduction by an employee pursuant to Section 219 of the Internal Revenue Code if, at the time of payment, it is reasonable to believe that the employee will be entitled to a deduction under that section for payment.

(5) Under a cafeteria plan (within the meaning of Section 125 of the Internal Revenue Code).

(j) To a master, officer, or any other seaman who is a member of a crew on a vessel engaged in foreign, coastwise, intercoastal, interstate, or noncontiguous trade.

(k) Pursuant to any provision of law other than Section 5(c) or 6(l) of the Peace Corps Act, for service performed as a volunteer or volunteer leader within the meaning of that act.

(l) In the form of group-term life insurance on the life of an employee.

1 (m) To or on behalf of an employee, and to the extent that, at
2 the time of the payment of remuneration it is reasonable to believe
3 that a corresponding deduction is allowable for moving expenses
4 pursuant to Article 6 (commencing with Section 17201) of Chapter
5 3 of Part 10 of Division 2 of the Revenue and Taxation Code.

6 (n) (1) As tips in any ~~medium other than cash~~. *medium*.

7 (2) As cash tips to an employee in any calendar month in the
8 course of his or her employment by an ~~employer, unless the amount~~
9 ~~of the cash tips is twenty dollars (\$20) or more~~. *employer*.

10 (3) *As tips, including any gratuity provided by a customer or*
11 *client of the employer's business.*

12 (o) For service performed by an individual on a boat engaged
13 in catching fish or other forms of aquatic animal life under an
14 arrangement with the owner or operator of the boat pursuant to
15 which all of the following apply:

16 (1) The individual does not receive any cash remuneration, other
17 than as provided in paragraph (2).

18 (2) The individual receives a share of the boat's (or the boats'
19 in the case of a fishing operation involving more than one boat)
20 catch of fish or other forms of aquatic animal life or a share of the
21 proceeds from the sale of the catch.

22 (3) The amount of the individual's share depends on the amount
23 of the boat's (or the boats' in the case of a fishing operation
24 involving more than one boat) catch of fish or other forms of
25 aquatic animal life.

26 This subdivision shall apply only where the operating crew of
27 the boat (or each boat from which the individual receives a share
28 in the case of a fishing operation involving more than one boat) is
29 normally made up of fewer than 10 individuals.

30 (p) For any medical care reimbursement made to, or for the
31 benefit of, an employee under a self-insured medical reimbursement
32 plan pursuant to Section 105(h)(6) of the Internal Revenue Code.

33 (q) To, or on behalf of, an employee to the extent not includable
34 in gross income pursuant to Section 13006.

35 (r) For services to which Section 633 applies.

36 (s) *The changes made to this section by the act adding this*
37 *subdivision shall apply on and after January 1, 2015.*

38 SEC. 12. Section 13009.5 of the Unemployment Insurance
39 Code is amended to read:

1 13009.5. (a) For purposes of the report required by subdivision
2 (a) of Section 1088 and the statement required by Section 13050,
3 “wages subject to personal income tax” means all of the following:

4 (1) Remuneration defined as wages by Section ~~13009~~, except
5 that in the case of tips received by an employee in the course of
6 his or her employment, the amounts shall include only those tips
7 included in statements furnished to the employer, pursuant to
8 Section ~~13055~~. 13009.

9 (2) Remuneration described in subdivisions (a), (b), (f), and (I)
10 of Section 13009, to the extent included in gross income.

11 (3) Payments made by a third party for sick pay as specified in
12 Section 931.5.

13 (A) Any employer who receives a report of wages from a
14 third-party payer as provided for in subdivisions (a) and (b) of
15 Section 931.5 shall report those wages to the department as
16 required under paragraph (2) of subdivision (a) of Section 1088.

17 (B) Any third-party payer described in Section 931.5 who fails
18 to report wages to an employer as provided for in that section shall
19 report those wages to the department as required under paragraph
20 (2) of subdivision (a) of Section 1088.

21 (b) (1) A person or entity shall not be required to register with
22 the Employment Development Department solely for the purpose
23 of reporting wages subject to personal income tax pursuant to
24 Section 1088 unless that registration is otherwise required by this
25 code.

26 (2) A person or entity shall not be required to withhold any tax
27 under Section 13020 for wages, as defined by this section, unless
28 that person or entity is required to withhold tax for those wages
29 as defined by Section 13009.

30 SEC. 13. Section 13027 of the Unemployment Insurance Code
31 is amended to read:

32 13027. (a) In the case of tips which constitute wages,
33 subdivision (a) of Section 13020 shall be applicable only to such
34 tips as are included in a written statement furnished to the employer
35 pursuant to Section 13055, and only to the extent that the tax can
36 be deducted and withheld by the employer, at or after the time
37 such statement is so furnished and before the close of the calendar
38 year in which such statement is furnished, from such wages of the
39 employee (excluding tips, but including funds turned over by the
40 employee to the employer for the purpose of such deduction and

1 withholding) as are under the control of the employer. An employer
2 who is furnished by an employee a written statement of tips
3 (received in a calendar month) pursuant to Section 13055 to which
4 paragraph (2) of subdivision (n) of Section 13009 is applicable
5 may deduct and withhold the tax with respect to such tips from
6 any wages of the employee (excluding tips) under his or her
7 control, even though at the time such statement is furnished the
8 total amount of the tips included in statements furnished to the
9 employer as having been received by the employee in such calendar
10 month in the course of his or her employment by the employer is
11 less than twenty dollars (\$20). Such tax shall not at any time be
12 deducted and withheld in any amount which exceeds the aggregate
13 of such wages and funds.

14 *(b) This section is repealed on January 1, 2015.*

15 SEC. 14. Section 13055 of the Unemployment Insurance Code
16 is amended to read:

17 13055. (a) Every employee who, in the course of his or her
18 employment by an employer, receives in any calendar month tips
19 which are wages shall report all such tips in one or more written
20 statements furnished to his or her employer on or before the 10th
21 day following such month. Such statements shall be furnished by
22 the employee under such authorized regulations, at such other
23 times before such 10th day, and in such form and manner as may
24 be prescribed by the department.

25 *(b) This section is repealed on January 1, 2015.*